SIXTH DIVISION
September 6, 2013

No. 1-12-1123

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN RE THE MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
PAMELA SOMAN CWIK	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 11 D 6535
v.	)	
	)	
ANDREW CWIK,	)	Honorable
	)	Veronica Mathein,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Hall concurred in the judgment.

ORDER

¶ 1 Held: The circuit court did not err in dismissing a former husband's petitions to enroll a foreign judgment for dissolution of marriage and to modify the parenting schedule. The circuit court also did not abuse its discretion in granting the former wife's petition for attorney fees after concluding the petitions were presented for an improper purpose.

¶ 2 In this postdissolution litigation, respondent Andrew Cwik (Andrew) seeks to appeal an order of the circuit court of Cook County dismissing his petitions to enroll a foreign judgment

and to modify a parenting schedule. Andrew also seeks to appeal the trial court's award of attorney fees to petitioner Pamela Soman Cwik (Pamela). For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Andrew and Pamela were married in 1996 and divorced in 2009 in Hamilton County, Ohio. On October 30, 2009, the court of common pleas in Hamilton County, Ohio (Ohio court) entered a divorce decree in case number DR0700706, naming Pamela the "residential parent and legal custodian" of their two children. The decree permitted Andrew supervised visits with the children on the first, second and third Saturday of each month from 10:00 a.m. until 2:00 p.m. and on the second, third and fourth Wednesday of each month from 4:30 p.m. until 7:30 p.m.[1]

¶ 5 On November 30, 2009, Pamela filed a motion to relocate to Chicago in the Ohio court. On January 19, 2010, the Ohio court entered an order granting Pamela's request to relocate and modified the visitation schedule. Under the order, Pamela was to provide transportation of the children to Cincinnati for Andrew's supervised visits on the first and third weekends of each month on Saturday from 1:00 p.m. to 6:00 p.m. and Sunday morning from 9:00 a.m. to 2:00 p.m.

---

[1] On February 2, 2009, the Ohio court had issued a decision allocating parental rights and responsibilities which required Andrew "shall participate in regularly-scheduled, individual psychotherapy sessions focused on his diminished understanding of his own anger and distress at the end of the marriage, as well as what is truly in the best interest of the children." This order stated, "requiring supervision for Defendant/Father's parenting time is a drastic step," and Andrew would be "given an opportunity to remedy the situation by seeking therapy."

Andrew was granted supervised parenting time in Chicago for a four hour period on Saturday and a five hour period on Sunday, the second weekend of each month, provided he give Pamela 30 days notice. The order also stated, "If Defendant/Father relocates to Chicago, the parenting time order shall remain the same as provided in the Decree of Divorce."

¶ 6 On February 5, 2010, in case number SK 1000012, the Ohio court granted Pamela's petition for an order of protection against Andrew through January 6, 2015. The order, marked "Civil Stalking Protection Order Full Hearing," directs Andrew "be restrained from committing acts of abuse or threats of abuse" against Pamela.

¶ 7 According to the Ohio court, on June 30, 2010, Pamela filed a motion requesting the Ohio court not to disclose her new address to Andrew. The Ohio court granted this motion.[2] In an affidavit filed in the circuit court, Pamela states she and the two minor children moved to Chicago in August 2010.

¶ 8 On October 15, 2010, the Ohio court entered an order in case number DR0700706 declaring Andrew a "vexatious litigator" in the domestic relations case. The order stated in relevant part:

---

[2] The parties do not identify whether the order granting the motion appears in the record. We observe, however, the record contains a July 14, 2011, order granting Pamela's motion to modify parenting time in case number DR0700706 which indicates the court granted the motion that her address not be disclosed.

> "This Court hereby enjoins and prohibits Andrew Cwik from the filing of any further litigation against either David Corry or Pamela Soman, including filing of any petitions for civil protection orders or motions in the above-captioned divorce case in the Court of Common Pleas, Division of Domestic Relations and must seek leave of court prior to the filing of any additional litigation, complaints, petitions or motions during the dates of the Preliminary Injunction in case number A1006342 [the separate civil proceedings] ***."

A similar order was entered in a civil proceeding commenced by David Corry.[3]

¶ 9 On April 5, 2011, and April 7, 2011, two writ of body attachments were issued against Andrew, one in the domestic relations case and another in the civil proceedings in which the Ohio court entered an order of protection.[4]

¶ 10 On June 2, 2011, Pamela filed a motion to modify the parenting time in the Ohio court. In her motion, Pamela argued: (1) Andrew no longer had a permanent address, refused to provide Pamela with his address, did not file an intent to relocate with the Ohio court[5], and therefore was

---

[3] The aforementioned orders do not specifically indicate David Corry's relationship to this litigation, but Pamela's filings in the circuit court indicate Corry is her fiancee.

[4] Pamela's motion to dismiss states the April 5, 2011, writ of body attachment was in relation to a contempt order for Andrew's failure to pay child support. This contempt order is not contained in the record on appeal.

[5] The record demonstrates on October 14, 2010, the Ohio court ordered Andrew to file a notice of intent to relocate with the court 30 days before he intended to move.

a flight risk as to the children; (2) Andrew engaged in inappropriate behavior in regards to the minor children such as sending the daughter magazines, providing the church with Pamela's address, asking the minor children "where are you" and approaching Pamela at Navy Pier in Chicago in violation of the order of protection; and (3) Andrew requested to drive with the children during parenting time despite an Ohio court order indicating Pamela is to provide transportation. Therefore Pamela requested the Ohio court suspend or modify Andrew's parenting time and restrict his driving privileges with the minor children until further order of court. In an affidavit filed in the circuit court, Pamela states this motion was scheduled for presentment in the Ohio court on July 13, 2011.

¶ 11 On June 28, 2011, Andrew filed two petitions in the circuit court of Cook County: (1) a petition to enroll foreign judgment for dissolution of marriage; and (2) a petition to modify parenting schedule. Andrew's petition to enroll foreign judgment stated both parties and the minor children have resided in Chicago, Illinois, for a period in excess of 90 days. The petition to modify parenting schedule stated Andrew moved to Chicago in November 2010 and since that time he has had supervised parenting time with the minor children pursuant to the divorce decree. Andrew alleged that as of May 15, 2011, Pamela has not permitted Andrew to see the minor children. Andrew sought to obtain unrestricted, increased parenting time with his children on weekdays, weekends, holidays, and during school breaks or vacations.

¶ 12 On July 14, 2011, the Ohio court granted Pamela's motion to modify Andrew's parenting time; Andrew was neither present nor represented at the hearing. The Ohio court's order stated in relevant part: (1) the court concluded Andrew "remains a resident of Hamilton County" as all

notices of appeal included his Cincinnati address and he did not file an intent to relocate with the court; (2) the court was not apprised of any ongoing litigation regarding the reallocation of parental rights and responsibilities of the minor children of the parties in any other court; (3) the court "retains exclusive continuing jurisdiction over the issue of reallocation of parental rights and responsibilities of the minor children of the parties pursuant to Ohio Revised Code Section 3127.16, The Uniform Child Custody Jurisdiction and Enforcement Act, and this Court further fully intends to retain and exercise its continuing jurisdiction within the confines of the law."

¶ 13 The Ohio court's order also stated in part:

> "Since exercising his supervised parenting time, Defendant/Father has engaged in behavior that is potentially harmful to the children, including but not limited to: driving the children in a van in traffic without the children in seats or in safety restraints, intimidating and bullying supervisors in the presence of the children, interrogating the children regarding their present location, and lingering after supervised visitation in an area where Plaintiff/Mother and the children are located."

The order further stated:

> "Defendant/Father has engaged in behavior that he knows or has reason to believe is frightening to Plaintiff/Mother, including but not limited to: making threats regarding litigation, making multiple telephone calls in a short span of time, alerting Plaintiff/Mother that he has knowledge of her address despite the Court Order, cyber-stalking Plaintiff/Mother and her relatives."

The Ohio court ordered Andrew's parenting time terminated, adding he was not to have any in-person contact with the minor children. Andrew, however, could apply for reinstatement of supervised parenting time by demonstrating evidence of "weekly-scheduled, individual psychotherapy sessions" and submitting evidence of a recent psychological evaluation demonstrating parental fitness. The Ohio court allowed Andrew to continue communicating with the minor children by telephone.

¶ 14 On August 3, 2011, Pamela filed a motion to dismiss Andrew's petitions to enroll foreign judgment of dissolution of marriage and to modify parenting time in the circuit court of Cook County, pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)). Pamela's motion asserted Andrew's petitions were filed to forum-shop and evade the Ohio courts and argued: (1) the Ohio court had exclusive jurisdiction pursuant to sections 203 and 206 of the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) (750 ILCS 36/203, 206 (West 2010)); (2) Andrew incorrectly relied on section 512(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/512(c) (West 2010)); and (3) Andrew failed to attach the complete judgment and postdecree documents as required by section 511(c) of the Act (750 ILCS 5/511(c) (West 2010)). Pamela also sought attorney fees and costs from Andrew as part of her prayer for relief. On August 10, 2011, Andrew filed a response to the motion to dismiss, arguing Illinois had jurisdiction pursuant to the UCCJEA.

¶ 15 On August 15, 2011, with counsel for both parties present, the circuit court granted Pamela's motion with prejudice and denied Andrew's petitions. The circuit court also granted

Pamela leave to file a petition for attorneys fees and costs, and removed the matter from the court's call.[6]

¶ 16 On September 21, 2011, Pamela filed a petition seeking attorney's fees and costs pursuant to sections 508(a) and (b) of the Act (750 ILCS 5/508(a),(b) (West 2010)). The circuit court continued the matter for hearing on November 9, 2011 and gave Andrew 28 days to respond to the petition, which was timely filed. On November 9, 2011, the circuit court granted Pamela's petition for attorneys fees and costs. The circuit court found Andrew's petitions were not filed in good faith. The circuit court also found Pamela's attorney fees and costs were incurred "as a result of improper purposes" and the hearing on the motion to dismiss "was precipitated and conducted for [an] improper purpose."

¶ 17 On December 8, 2011, Andrew filed a motion to vacate, rehear or reconsider the circuit court's November 9 order. On December 15, 2011, Pamela filed a response to the motion. That same day, the circuit court entered an order granting Pamela leave to file her response *instanter*, giving Andrew 28 days to file a reply, and continuing the matter for hearing. On February 6, 2012, after full briefing and hearing on Pamela's petition for attorneys fees, the circuit court granted the parties seven days to submit additional case authority regarding section 508(b) of the Act (750 ILCS 5/508(b) (West 2010)) and took the matter under advisement.

¶ 18 On March 15, 2012, the circuit court denied Andrew's motion to vacate. On April 13, 2012, Andrew filed a notice of appeal.

---

[6]The record on appeal does not contain a transcript of the proceedings of August 15, 2011.

¶ 19 DISCUSSION

¶ 20 Appellate Jurisdiction

¶ 21 As an initial matter, we address Pamela's contention this court lacks jurisdiction to consider Andrew's appeal of the August 15, 2011 order dismissing his petitions. Pamela notes a party seeking to appeal a trial court judgment generally must file a notice of appeal within 30 days after entry of a final judgment or within 30 days after entry of an order disposing of the last pending postjudgment motion, if any. See Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). Pamela argues Andrew's notice of appeal was untimely because the trial court's August 15, 2011, order granted her motion to dismiss with prejudice and removed the matter from the call, yet Andrew did not file his notice of appeal until almost 10 months later, on April 13, 2012.

¶ 22 Andrew maintains the last pending postjudgment motion was his motion to reconsider, which the trial court did not deny until March 15, 2012, thus rendering his April 13, 2012, notice of appeal timely. Section 2-1203(a) of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2010)), which governs postjudgment motions in cases decided without a jury, provides:

> "In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief."

"Only a sufficient post-judgment motion, timely filed, will toll the 30-day period for filing a notice of appeal." *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522 (2001). Andrew's motion to vacate, rehear or reconsider was filed on December 8, 2011 – more than 30 days after the August

15, 2011, dismissal. Accordingly, Andrew's motion tolls the time for filing a notice of appeal only if the time for appeal was first tolled by the pendency of Pamela's petition for attorneys fees and costs.

¶ 23 A split in authority currently exists regarding the timing of an appeal from postdissolution proceedings in situations similar to this case. Pamela relies upon decisions from the First and Third districts of this court, which generally have held a postdissolution petition is a new action and is therefore independently appealable upon its resolution even if other postdissolution matters are pending and the trial court did not certify the matter pursuant to Illinois Supreme Court Rule 304(a).[7] See, *e.g.*, *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶¶ 26-38; *In re Marriage of A'Hearn*, 408 Ill. App. 3d 1091, 1097-98 (2011); *In re Marriage of Carr*, 323 Ill. App. 3d 481 (2001). In contrast, the Second and Fourth districts of this court have held a postdissolution petition is a new claim within the original dissolution proceeding and therefore, in the absence of a Rule 304(a) finding, is appealable only when all pending postjudgment

[7] Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) provides in relevant part if multiple claims are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the claims only if the trial court makes an express written finding that there is no just reason to delay enforcement, appeal, or both. Absent a Rule 304(a) finding, a final order disposing of fewer than all the claims is not an appealable order and does not become appealable until all of the claims are resolved. *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 464 (1990).

motions or separate claims are resolved. See, *e.g.*, *In re Marriage of Schwieger*, 379 Ill. App. 3d 687, 689-90 (2008); *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1043-50 (2007); *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 734-45 (2007); *In re Marriage of Gaudio*, 368 Ill. App. 3d 153, 157-58 (2006); *In re Marriage of Alyassir*, 335 Ill. App. 3d 998, 999-1001 (2003).

¶ 24 We find the opinion issued by this division of the First District in *Demaret* instructive. In that case, the circuit court denied a former wife's request to remove the parties' minor children from Illinois to New Jersey. *Demaret*, 2012 IL App (1st) 111916, ¶ 1. The former husband filed a petition for contribution toward the attorney fees he would incur in conjunction with the removal petition. *Id*. at ¶ 4. On appeal, the former husband contended we lacked jurisdiction because his petition for attorney fees remained unresolved when the former wife filed her notice of appeal from the denial of her removal petition. *Id*. at ¶ 25.

¶ 25 After noting the split in authority on this issue, we rejected the argument that *Carr* and its progeny were "effectively overruled" by our supreme court's decision in *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008). *Id*. at ¶ 34. For the purpose of explaining this aspect of *Demaret*, we summarize the proceedings and ultimate decision in *Gutman*. In that case, the trial court ordered the husband to pay maintenance for three years, beginning in July 1999. *Gutman*, 232 Ill. 2d at 147. On June 21, 2002, the wife filed a petition to continue maintenance. *Id*. In response to a court order directing the husband to continue making maintenance payments until the court resolved the wife's petition, the husband filed a cross-petition to terminate maintenance. *Id*. at 147-48. While the opposing petitions where pending, the wife filed a contempt petition

based on the husband's failure to make maintenance payments as directed by court order. *Id*. at 148.

¶ 26 The wife failed to appear at the scheduled hearing on the cross-petitions. The circuit court granted the husband's petition to terminate maintenance and dismissed the wife's contempt petition, but subsequently vacated both judgments on the wife's motion. *Id*. When the wife failed to appear at a second hearing on the cross-petitions, the circuit court entered an order on June 23, 2005, terminating the husband's maintenance obligation, but not addressing the contempt petition or containing a Rule 304(a) finding. *Id*. The circuit court denied the wife's motion of July 23, 2005, seeking to vacate the June 23, 2005 order. Thirty-five days after the wife's motion to reconsider was denied, she filed an appeal, which this court dismissed as untimely. *In re Marriage of Gutman*, 376 Ill. App. 3d 758, 759 (2007).

¶ 27 Our supreme court affirmed the dismissal, but on the basis that this court lacked jurisdiction because the former wife's contempt petition remained pending before the circuit court when she filed her appeal. *Gutman*, 232 Ill. 2d at 151. The supreme court ruled the contempt petition for nonpayment of maintenance was sufficiently related to the cross-petitions on maintenance that a ruling on the contempt petition was required to render the ruling on the maintenance cross-petitions final and appealable. *Id*. at 152-54. The contempt petition for nonpayment of maintenance could not be treated as independent of the maintenance cross-petitions. *Id*. The court limited its examination of precedent to cases concerning contempt petitions. See *id*. Moreover, the *Gutman* court did not discuss *Carr*.

¶ 28 In *Demaret*, this division agreed with the Third District that *Gutman* did not resolve the split in authority and was limited to the context of contempt proceedings. *Demaret*, 2012 IL App (1st) 111916, ¶¶ 35-36; see *A'Hearn*, 408 Ill. App. 3d at 1097. Consequently, we concluded the former husband's pending attorney fee petition did not deprive this court of jurisdiction to consider the former wife's appeal. *Demaret*, 2012 IL App (1st) 111916, ¶ 38.

¶ 29 Our conclusion in *Demaret*, however, does not require this court to conclude Andrew was required to file his postjudgment motion or notice of appeal within 30 days of the dismissal order in this case. *Demaret* makes a crucial distinction between typical attorney fee petitions under the Act and the contempt petition in *Gutman*, which was related to the underlying petitions. In *Demaret*, the pending petition sought contribution toward the attorney fees incurred in the proceedings, apparently pursuant to section 508(a) of the Act, which provides that a court may order a former spouse to pay a reasonable amount for attorney fees necessarily incurred by the other spouse in connection with the maintenance or defense of any proceeding under the Act. *Demaret*, 2012 IL App (1st) 111916, ¶ 4; see 750 ILCS 5/508(a) (West 2010). Fee awards under section 508(a) of the Act fall within the discretion of the circuit court and generally involve an assessment of the parties' relative abilities to pay. See, *e.g.*, *In re Marriage of Bolte*, 2012 IL App (3d) 110791, ¶ 28; *In re Marriage of Stadheim*, 170 Ill. App. 3d 19, 25 (1988).[8]

[8] A similar petition for contribution of attorney fees was at issue in *Carr*. See *Carr*, 323 Ill. App. 3d at 483.

¶ 30 In contrast, in this case, Pamela's attorney fee petition was in the nature of sanctions sought under section 508(b) of the Act (750 ILCS 5/508(b) (West 2010)). Fees under section 508(b) may be imposed as a sanction without consideration of either party's ability to pay. *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 40; *In re Marriage of Walters*, 238 Ill. App. 3d 1086, 1098 (1992). Sanctions motions for improper filings are generally interwoven with the case in which they arise and generally should be considered together with any appeal from the underlying case. *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 344-45 (2001). This general rule is grounded in the public policy against piecemeal appeals. *Id*. at 344. Similar concerns undergird the *Gutman* decision. See *Gutman*, 232 Ill. 2d at 152-54. Accordingly, we conclude the trial court's August 15, 2011, dismissal of Andrew's petitions did not dispose of all claims pending before the circuit court, as the order also granted Pamela leave to file her fee petition. See *In re Marriage of Merrick*, 183 Ill. App. 3d 843, 845-47 (1989) (order not final and appealable where court reserves fee issue). Thus, this court has jurisdiction to consider Andrew's appeal of the August 15, 2011 order dismissing Andrew's petitions.

¶ 31 The Dismissal of Andrew's Petitions

¶ 32 Andrew contends the circuit court erred in granting Pamela's motion to dismiss, arguing Illinois courts have subject matter jurisdiction to rule on his petitions under the UCCJEA. Pamela's motion was brought pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2010). The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proven issues of fact at the outset of litigation. *Van Meter v. Darien Park District*, 207 Ill. 2d

359, 367 (2003). Under section 2-619(a)(1) of the Code, a party may raise the trial court's lack of subject matter jurisdiction as a basis for dismissal. 735 ILCS 5/2–619(a)(1) (West 2010).

¶ 33 A section 2-619 motion "admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts." *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). Moreover, in ruling on a section 2-619 motion to dismiss, the circuit court may consider pleadings, affidavits, answers to interrogatories, depositions, and other proofs presented by the parties. *Tolan & Son, Inc. v. KLLM Architects, Inc.*, 308 Ill. App. 3d 18, 31 (1999). When the movant's supporting proof is not challenged or contradicted by counter-affidavits or other appropriate means, the facts stated therein are deemed admitted. *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995). Under section 2-619 of the Code, our standard of review is *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). Accordingly, this court conducts an independent review of the propriety of dismissing the complaint. *E.g.*, *In re Marriage of Sullivan*, 342 Ill. App. 3d 560, 563 (2003).

¶ 34 Pamela's motion to dismiss relied on sections 203 and 206 of the UCCJEA (750 ILCS 36/203, 206 (West 2010). Section 203 provides:

> "Except as otherwise provided in Section 204, a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

> (1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this State would be a more convenient forum under Section 207; or
>
> (2) a court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state." 750 ILCS 36/203 (West 2010).

Andrew contends his petitions could not be dismissed based on section 203 because he, Pamela and their children all reside in Illinois. Indeed, Andrew also maintains that since they do not reside in Ohio, the Ohio court no longer has continuing, exclusive jurisdiction over the matter. See *In re Marriage of Akula*, 404 Ill. App. 3d 350, 360 (2010) ("The drafters of the UCCJEA intended that exclusive, continuing jurisdiction ceases when a court determines that the child, the parents, and all persons acting as parents physically left the decree state to live elsewhere.").

¶ 35 We disagree. The relevant part of section 203(1) of the UCCJEA requires the court of the other state to determine it no longer has exclusive, continuing jurisdiction under section 202. In this case, the Ohio court's July 14, 2011, order stated the Ohio court "retains exclusive continuing jurisdiction over the issue of reallocation of parental rights and responsibilities of the minor children of the parties pursuant to Ohio Revised Code Section 3127.16, The Uniform Child Custody Jurisdiction and Enforcement Act, and this Court further fully intends to retain and exercise its continuing jurisdiction within the confines of the law." Though Andrew argues the Ohio court could not exercise exclusive, continuing jurisdiction "within the confines of the law"

once the parents and children have left Ohio, the July 14 order is in no respect a determination the Ohio court no longer has exclusive, continuing jurisdiction over the matter.

¶ 36 Section 203(2) of the UCCJEA applies where "a court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state." 750 ILCS 36/203 (West 2010). The Ohio court's July 14, 2011 order determined Andrew "remains a resident of Hamilton County" as all notices of appeal included his Cincinnati address and he did not file an intent to relocate with the court. Accordingly, the remaining issue is whether the circuit court should have found a genuine issue of material fact exists regarding Andrew's residency.

¶ 37 The record on appeal indicates Andrew's response to the motion to dismiss contained no counter-affidavit or other indicia of proof to the circuit court to contradict the Ohio court's determination of Andrew's residency. Thus, the determination is deemed admitted. *Zedella*, 165 Ill. 2d at 185. Andrew's brief refers to the Ohio court's January 19, 2010 order, which indicates Andrew's condominium was in foreclosure with a sheriff's sale scheduled. The January 19 order also mentions it was Andrew's stated intention to move to Chicago. The January 19, 2010, order is not evidence of Andrew's residence at the time the motion to dismiss was granted, particularly in light of the subsequent July 14, 2011 order determining Andrew remained a resident of Ohio. Andrew's brief also points to his counsel's March 19, 2012, notice of a motion to withdraw, as well as a March 22, 2012 notice of a motion for a rule to show cause Pamela served on Andrew, both of which bear an identical address in Chicago. Both notices postdate not only the August 15, 2011, dismissal order but the circuit court's denial of the motion to vacate on March 15, 2012.

To survive the section 2-619(a)(1) motion to dismiss, Andrew would have to establish a genuine issue of material fact exists as to his residence, which would require some demonstration that his presence in Illinois had some degree of permanency beyond a temporary sojourn. See *Akula*, 404 Ill. App. 3d at 360 ("residing" connotes some degree of permanency beyond a temporary sojourn). In this case, Andrew failed to establish this fact. Thus, the circuit court did not err in granting Pamela's motion to dismiss. Accordingly, we need not determine whether the circuit court could have properly dismissed Andrew's petitions pursuant to section 206 of the UCCJEA.

¶ 38 Attorney Fees

¶ 39 Andrew next contends the circuit court lacked jurisdiction to consider Pamela's attorney fee petition. Andrew relies upon *In re Marriage of Rogers*, 141 Ill. App. 3d 561 (1986), which involved the proper application of the Uniform Child Custody Jurisdiction Act (the predecessor to the UCCJEA). In *Rogers*, the plaintiff moved from Missouri to Illinois and subsequently obtained an order, without notice to defendant, to register the parties' judgment of dissolution in the circuit court of St. Clair County, Illinois. *Id.* at 563. Thereafter, the plaintiff filed a petition for a rule to show cause related to the custody and visitation provision of the Missouri judgment of dissolution. *Id.* The court found defendant to be in contempt and ordered him to serve 30 days in the St. Clair County Jail. The court further ordered him to pay plaintiff, as her attorney fees, the sum of $900. The same order fixed visitation rights of the plaintiff for summer vacation, Christmas and Easter holidays, and required defendant to pay a portion of the expenses associated with visitation, even though a Virginia court had in the meantime entered a contrary

order. *Id*. at 564. This court reversed, stating that the circuit court exercising jurisdiction over the matter was a patent violation of the Uniform Child Custody Jurisdiction Act. *Id*. at 564-65.[9]

¶ 40 In this case, however, the circuit court properly determined the court lacked jurisdiction. Moreover, unlike *Rogers*, the court awarded attorney fees as a sanction against Andrew for improperly bringing the action, not as a sanction for violating a decree over which the court had no jurisdiction. The circuit court always has jurisdiction to consider the court's jurisdiction, even *sua sponte*. See, *e.g*., *Brandon v. Bonell*, 368 Ill. App. 3d 492, 501-02 (2006). Accordingly, the circuit court also would have jurisdiction to determine whether the hearings in this case were "precipitated or conducted for any improper purpose," including "harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." See 750 ILCS 5/508(b) (West 2010).

¶ 41 Andrew also argues Pamela was required to file her fee petition within 30 days of the dismissal order. Andrew primarily relies on *Macaluso v. Macaluso*, 334 Ill. App. 3d 1043, 1045-47 (2002), but that case involved an application for fees under section 508(a) of the Act, not section 508(b). In this case, as previously stated, the dismissal of Andrew's petitions did not dispose of all claims pending before the circuit court, as the order also granted Pamela leave to file her fee petition. See *Marriage of Merrick*, 183 Ill. App. 3d at 845-47. The circuit court did

---

[9] Moreover, the *Rogers* court observed in that case the child was never a resident of Illinois and Illinois courts have jurisdiction to make a child custody determination if Illinois is the home state of the child. *Id*. at 564. In contrast, Andrew claims the children here reside in Illinois.

not impose a deadline for filing the fee petition. Andrew cannot claim the dismissal order was not appealable due to the pendency of the inextricably linked fee petition, but the circuit court lacked jurisdiction over the fee petition.

¶ 42 Lastly, Andrew contends the trial court erred in awarding Pamela fees under section 508(b) of the Act, which provides:

> "In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. If non-compliance is with respect to a discovery order, the non-compliance is presumptively without compelling cause or justification, and the presumption may only be rebutted by clear and convincing evidence. If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2010).

An award of attorney fees under section 508(b) of the Act lies within the sound discretion of the circuit court, and its determination will not be overturned absent a clear abuse of discretion. *Hofmann v. Hofmann*, 94 Ill. 2d 205, 229 (1983). A clear abuse of discretion takes place when " 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would

take the view adopted by the trial court.' " *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

¶ 43 Andrew notes the trial court did not specifically find Andrew acted "without compelling cause or justification," but the circuit court here found the proceedings were precipitated for an "improper purpose," which is a separate basis for a fee award under section 508(b) of the Act. 750 ILCS 5/508(b) (West 2010).

¶ 44 Andrew also asserts the circuit court never provided a factual basis for its finding. As Pamela observes, however, Andrew provided no transcript of proceedings or bystander's report for the November 9, 2011, hearing which resulted in the circuit court granting Pamela's petition for attorneys fees and costs. As the appellant, Andrew has the burden to present a sufficiently complete record for review. *E.g.*, *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Id.* "Without an adequate record preserving the claimed error, the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law." *Id.* at 157. " 'Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.' " *Id.* (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)). Accordingly, pursuant to *Corral*, we presume the circuit court's ruling was not arbitrary, fanciful, or unreasonable. *Corral*, 217 Ill. 2d at 156. Thus, we conclude Andrew has failed to establish the circuit court abused its discretion in awarding Pamela attorney fees in this matter.

¶ 45 CONCLUSION

¶ 46 In sum, this court has jurisdiction to consider Andrew's appeal of the August 15, 2011 order dismissing his petitions, and we conclude the circuit court did not err in dismissing the petitions for lack of jurisdiction. We also conclude the circuit court had jurisdiction to consider Pamela's fee petition and Andrew failed to show the circuit court abused its discretion in granting the petition. For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 47 Affirmed.